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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

ICALL, INC.,)	Case No.: CV 12-2406 EMC
)	
Plaintiff,)	SUPPLEMENTAL DECLARATION OF
)	CHARLES CARREON IN SUPPORT OF
vs.)	REPLY BRIEF RE MOTION FOR
)	PRELIMINARY INJUNCTION
TRIBAIR, INC., ERIC REIHER,)	
and Does 1 – 5,)	Judge: Hon. Edward M. Chen
)	Courtroom: 5, 17 th Floor
Defendants.)	Date: November 15, 2012
)	Time: 9:30 a.m.
)	
)	
AND RELATED COUNTERCLAIM)	
)	

DECLARATION OF CHARLES CARREON

Charles Carreon declares and states as follows:

1. I am an attorney licensed to practice law in the State of California, admitted to the Bar of this Court, and the attorney for plaintiff iCall, Inc (“iCall”). I make this declaration on personal knowledge and an informed review of relevant documents, and if called as a witness could and would so competently testify.
2. This declaration is made to rebut incomplete averments in the declaration of Eric Reiher (“Reiher” and the “Reiher declaration”), CEO of defendant Tribair (“Tribair”), and to provide facts to clarify misleading contentions in Tribair’s brief in opposition to iCall’s motion for preliminary injunction (the “Opposition Brief”).

1 **3.** Katherine Keating is the trademark attorney for the Wi-Fi Alliance who registered the
 2 Wi-Fi Certification Mark, as recorded on the Registration Certification for the Wi-Fi
 3 Certification mark, attached as **Exhibit 24**.

4 **4.** I spoke with Ms. Keating over the telephone on October 30, 2012 concerning this matter,
 5 and as is recorded in our exchange of emails attached as **Exhibit 25**, she confirmed that:

- 6 a. Tribair has no authorization to use the Wi-Fi Certification Mark,
- 7 b. The Wi-Fi Alliance objects to Tribair's use of the Wi-Fi Certification Mark, and
- 8 notified the App Store of its objection.

9 **5.** I have been personally responsible for handling iCall's enforcement activity for several
 10 years, as previously averred in my declaration in support of the initial motion papers. I checked
 11 the validity of Reiher's claim in paragraph 18 of his declaration that there are a number of other
 12 products and services infringing the iCall mark, and discovered that only one of them is actually
 13 a VoIP service. That company will be receiving a cease and desist letter shortly.

14 **6.** The progress of Tribair's VoIP marketing has resulted in six phases of marketing, and
 15 five distinguishable brands:

- 16 a. Tribair launched its VoIP under the Tribair brand. (**Exhibit 13** submitted with
 original moving papers.)
- 17 b. Jealous of iCall's popularity, Tribair incorporated the iCall mark into its WiCall
 18 mark, and for visual flair, joined it with the Wi-Fi Alliance Certification Mark #
 19 2,523,241, despite not having any Wi-Fi certified equipment to sell. (**Exhibit 26**.)
 20 This agglomeration of "other-people's marks" appeared in the iTunes / App Store
 until the Wi-Fi Alliance learned of the infringement.
- 21 c. After being notified by the Wi-Fi Alliance that it did not have the right to use the
 22 Wi-Fi Alliance Certification Mark, Tribair altered the visual component of its
 23 logo in the iTunes / App Store, creating yet *another* mark. (See Reiher Dec. ¶ 19
 24 and iCall's **Exhibit 11** submitted with the moving papers.) Additionally, Tribair
 25 designated "iCall" as a search keyword in the App Store, so that consumers
 looking for iCall would discover WiCall, thus leading to increased brand
 confusion. No screencapture of this phase of Tribair's mark-dance exists;
 however, your declarant observed it.
- 26 d. Tribair attempted to register the text-only WiCall mark with the USPTO, Serial
 27 Number 8,5574,570. See iCall's Letter of Protest. (**Exhibit 14** submitted with
 28 original moving papers.)

1 e. Tribair continues to market the WiCall app on Google Play combining the WiCall
2 mark and the Wi-Fi Alliance Certification Mark, in defiance of the Wi-Fi
Alliance's trademark rights and enforcement efforts. (**Exhibit 27**.)

3 f. Tribair continues to market under the name of Tribair in the App Store, on Google
4 Play, and at its Tribair.com website, using a third logo that incorporates a "T" and
5 a telephone handset in profile. (**Exhibit 13** submitted with original moving
6 papers.) Further, *when an Internet user searches for "iCall"* in the search box
on Google Play, as it once did in the App Store with respect to WiCall, *the*
Tribair app appears. (**Exhibit 23**.)

7 **7.** Attached hereto jointly as **Exhibit 28** are:

8 a. A screenshot of an interview with Reiher dated January 28, 2011 in Next
9 Montreal located at the following URL:

10 [http://nextmontreal.com/2011/01/28/tribair-goes-after-skype-with-free-wi-fi-](http://nextmontreal.com/2011/01/28/tribair-goes-after-skype-with-free-wi-fi-community/)
11 [community/](http://nextmontreal.com/2011/01/28/tribair-goes-after-skype-with-free-wi-fi-community/).

12 b. A screenshot of Reiher's blog located at <http://blog.tribair.com>

13 **8.** I obtained the *nunc pro tunc* assignment of goodwill attached as **Exhibit 29** from
14 California attorney John Mackel, who was the corporate officer authorized by Plaintiff's
15 corporate predecessors-in-interest to handle the disposition of the intellectual property of the
16 original iCall, Inc. to cure any clerical deficiencies in the assignments obtained by Arlo C.
17 Gilbert for the benefit of Plaintiff. Such an assignment was valid under Cal. Corp. Code §
18 1903(b), because Mr. Mackel was trustee of the corporate assets charged with winding up the
19 affairs of dissolved business corporations.

20 **9.** Attached hereto as **Exhibit 30** is a screenshot of an online article entitled "The 5
21 newest VoIP Apps on the Market," dated November 1, 2012, located at the following URL:
22 <http://www.resourcenation.com/blog/the-5-newest-voip-apps-on-the-market/35387/>.

23 **10.** Attached hereto as **Exhibit 31** are screenshots of Google search results for
24 "iCall+new+york+times+app+of+the+week."

25 I hereby declare, pursuant to the provisions of 28 U.S.C. § 1746 (2), under penalty of perjury
26 under the laws of the United States of America, that the foregoing is true and correct, and that
27 this declaration was executed on November 2, 2012.

Executed at Tucson, Arizona

/s/Charles Carreon

Charles Carreon, Declarant